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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,620

09/19/2003

David E. Galomb

F1012/20134

4006

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7590

07/17/2006

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EXAMINER

PASCUA, JES F

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,620

Applicant(s)

GALOMB, DAVID E.

Examiner

Jes F. Pascua

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 41-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-38 and 60-67 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-49, 52, 54 and 56 is/are allowed.
- 6) ☒ Claim(s) 39, 41-44, 50, 51, 53 and 57-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 04/27/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,953,069 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 39, 41, 50 and 51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doyen et al. See Fig. 7.

The recitation “A package for use in a system...the system including an opening” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language “whereupon said package can be introduced into the opening” and “to control the propagation of said aperture in the package” a recitation

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of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the bottom seam 6 that connects the sidewalls 2 to the bottom wall 3 meets the recitation "the periphery of the base wall is reinforced" because the bottom seam 6 provides a two-ply structure (the sidewall sealed to the bottom wall), which would be stronger than the single-ply structure of the bottom wall 3 alone.

4. Claims 39, 41, 50, 57 and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Frisk.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening" and "to control the propagation of said aperture in the package" a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the

claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the bottom seam 40 that connects the sidewalls to the bottom wall in Frisk meets the recitation "the periphery of the base wall is reinforced" because the bottom seam 40 provides a two-ply structure (the sidewall sealed to the bottom wall), which would be stronger than the single-ply structure of the bottom wall alone.

Regarding claim 57, the base wall of the Frisk package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

5. Claims 39, 41, 50, 57 and 59 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Erickson et al.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening" and "to control the propagation of said aperture in the package" a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the

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claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the bottom seam 56 that connects the sidewalls to the bottom wall in Erickson et al. meets the recitation "the periphery of the base wall is reinforced" because the bottom seam 56 provides a two-ply structure (the sidewall sealed to the bottom wall), which would be stronger than the single-ply structure of the bottom wall alone.

Regarding claim 57, the base wall of the Erickson et al. package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

6. Claims 39, 41, 43, 44, 50 and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gautier.

The recitation "A package for use in a system...the system including an opening" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language "whereupon said package can be introduced into the opening" and "to control the propagation of said aperture in the package" a recitation of the intended use of the claimed invention must result in a structural difference

between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the bottom seam defined by seal lines 5a, 5b, 6a, 6b, 7a, 7b that connects the sidewalls to the bottom wall in Gautier meets the recitation “the periphery of the base wall is reinforced” because the bottom seam provides a two-ply structure (the sidewall sealed to the bottom wall), which would be stronger than the single-ply structure of the bottom wall alone.

Regarding claim 57, the base wall of the Gautier package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

7. Claims 39, 41, 43, 44, 50, 51 and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kugler.

The recitation “A package for use in a system...the system including an opening” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Regarding the claim language “whereupon said package can be introduced into the opening” and “to control the propagation of said aperture in the package” a recitation

of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the bottom seam that connects the sidewalls to the bottom wall in Kugler meets the recitation "the periphery of the base wall is reinforced" because the bottom seam provides a two-ply structure (the sidewall sealed to the bottom wall), which would be stronger than the single-ply structure of the bottom wall alone.

Regarding claim 57, the base wall of the Kugler package is inherently capable of being punctured or cut when it comes in contact with the point of a knife blade with a predetermined force.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 42 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyen et al., Frisk or Erickson et al. in view of Bustin.

Doyen et al., Frisk and Erickson et al. each disclose the claimed device except for seal lines forming the periphery of the base wall being crimped heat seal. Bustin discloses that it is known in the art to define the periphery of an analogous base wall

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with crimped heat seals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base wall seal lines of Doyen et al., Frisk or Erickson et al. with the crimped heat seals of Bustin, in order to stiffen the bottom of the package.

10. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyen et al., Frisk, Erickson et al., Gautier or Kugler.

Doyen et al., Frisk, Erickson et al., Gautier and Kugler each disclose the claimed invention except for angled linear seals extending at an angle greater than 45 degrees to its associated linear side edge. It would have been an obvious matter of design choice to extend the angled linear seals of Doyen et al., Frisk, Erickson et al., Gautier or Kugler such that they are at an angle greater than 45 degrees to its associated linear side edge, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

11. Claims 45-49, 52, 54 and 56 are allowed.

Response to Arguments

12. Applicant's arguments filed 04/27/2006 have been fully considered but they are not persuasive. In response to applicant's argument that the prior art does not disclose

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the idea of utilizing reinforcing at the periphery of the base wall of the package to control the propagation of the cut when the package is introduced into the system including knife blades for cutting the bottom wall, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented


claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP